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15 Attorneys for Defendant  
16 RUBEN MEDINA

17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 UNITED STATES OF AMERICA,  
20 Plaintiff,  
21 v.  
22 RUBEN MEDINA,  
23 Defendant.

24 } Case No. CR 05-578(A)-JFW  
25 }  
26 } DEFENDANT RUBEN MEDINA'S  
27 } OBJECTION TO  
28 } GOVERNMENT'S  
29 } INFORMATION PURSUANT TO  
30 } 21 USC § 851

31  
32 Defendant, Ruben Medina, by and through his attorneys of record, Cornell  
33 Price and George L. Steele, hereby objects to the Government's Information pursuant  
34 to 21 USC § 851.

35 Dated: July 27, 2007

36 By:

37 Cornell Price  
38 George L. Steele  
39 Attorneys for Defendant  
40 RUBEN MEDINA

## INTRODUCTION

2 On November 30, 2005, the Government filed a First Superseding Indictment  
3 naming Ruben Medina as a defendant. On March 3, 2006, the Government filed an  
4 Information pursuant to 21 U.S.C. §851 alleging a prior narcotics felony conviction  
5 for Mr. Medina. Mr. Medina objects to the Information because it violates his  
6 constitutional right to a jury trial.

**Mr. Medina Objects to the Application of a Mandatory Minimum Sentence on  
the Basis of Facts not Proven to Jury Nor Admitted by Defendant On the  
Ground that the Enhancement is Unconstitutional**

The application of the mandatory minimum penalty under 21 U.S.C. § 840(b)(1)(A) and 21 U.S.C. §851 is unconstitutional on its face and as applied in this case. The rule of Apprendi v. New Jersey, 530 U.S. 466 (1998), barring increases in the sentencing range based on judge-found facts not proven to the jury beyond a reasonable doubt or admitted by the defendant, should apply equally to facts that increase the minimum as well as the maximum sentence. As Justice Thomas explained, “(W)hether one raises the floor or raises the ceiling it is impossible to dispute that the defendant is exposed to greater punishment than is otherwise prescribed.” Harris v. United States, 536 U.S. 545, 579 (2002) (Thomas, J., dissenting).

20        Although the majority in Harris upheld the application of such mandatory  
21 minimum penalties, id. at 567-68, Harris was decided by a 5 to 4 vote, in which one  
22 of the five majority justices was Justice Breyer, who candidly acknowledged that this  
23 holding could not logically be squared with Apprendi. Breyer nonetheless concurred  
24 in the result because he could not “yet accept Apprendi’s rule.” Id. at 569. Since  
25 Breyer’s remedy opinion in Booker was predicated on the application of Apprendi’s  
26 rule to the federal guidelines, he presumably does now accept its rule. The continued  
27 vitality of Harris, therefore, appears doubtful.

28 | //

1        In the instant case, the facts necessary for the application of the mandatory  
2 minimum penalty were not proven to a jury beyond a reasonable doubt, and  
3 defendant did not admit to them. In accordance with the Sixth Amendment right to  
4 jury trial, this mandatory minimum penalty provision cannot be applied.

5

6 Dated: July 27, 2007

7

8 By:



Cornell Price  
George L. Steele  
Attorneys for Defendant  
RUBEN MEDINA

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**PROOF OF SERVICE**

I, the undersigned, declare that I am a resident or employed in Los Angeles County, California; that my business address is the Law Offices of George L. Steele, 600 Playhouse Alley, Suite 402, Pasadena, CA 91101; that I am over the age of eighteen years; that I am not a party to the above-entitled action; that I am employed by the Law Offices of George L. Steele, who is a member of the Bar of the United States District Court for the Central District of California, and at whose direction I served the **DEFENDANT RUBEN MEDINA'S OBJECTION TO GOVERNMENT'S INFORMATION PURSUANT TO 21 U.S.C. § 851.**

On July 27, 2007, following ordinary business practice, service was:

- X** (BY MAIL) By placing a true copy of the foregoing documents in a sealed envelope addressed as set forth below. I caused such envelope with postage thereon fully paid to be placed in the United States mail at Pasadena, California.

Nicolas J. Estrada  
Nicolas J. Estrada Law Offices  
1611 S. Catalina Ave., Ste. 300  
Redondo Beach, CA 90277

*Counsel for Manuel Yepiz*

In addition, I caused the foregoing documents to be served electronically on all counsel following CM/ECF filing with the Court.

This proof of service is executed at Pasadena, California, on July 27, 2007.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Christina A. Hicklin  
(Type or print name)

(Signature)